
1995 Wis Eth Bd 6
DISQUALIFICATION; IMPROPER USE OF OFFICE

The Ethics Board advises that a member of the governing board of a state agency should not participate in discussing, evaluating, or voting whether to award a financial grant to a business with which the member is associated or to a grant competitor. Moreover, the board should not award a grant to any business in which a member of the board or the member's immediate family has a direct pecuniary interest. OEB95-6 (September 18, 1995)

Facts

[1] This opinion is based upon these understandings:

- a. You are the chief executive of a state agency and write on the agency's behalf.
- b. The agency is governed by a board composed of individuals appointed by the Governor and who are, thus, state public officials.
- c. At least one member of the board is an officer of a company that may apply for funding from the board.

Questions

[2] The Ethics Board understands your question to be:

Does the Ethics Code restrict the agency's grant of funds to a company with which a member of the agency's governing board is associated?

Discussion

[3] The provisions of the Ethics Code most pertinent to your inquiry are §§19.45(2) and 19.46(1), *Wisconsin Statutes*. Those sections generally prohibit a state public official (1) from using his or her office to obtain anything of substantial value or a substantial benefit for himself or herself or for an organization with which the official is associated or (2) from taking any

official action substantially affecting a matter in which the official or an organization with which the official is associated has a substantial financial interest.¹ An official is “associated” with an organization if the official, or a member of the official’s immediate family: (a) is an officer or director; (b) owns or controls 10% or more of the business’ outstanding equity; or (c) is an authorized representative or agent.²

[4] These provisions prohibit a member of the board from participating in a decision whether to grant funding to a business with which the member is associated. 7 Op. Eth. Bd. 5 (1983); 1 Op. Eth. Bd. 120 (1978), 100 (1977). This means that the member should not participate in discussing, evaluating, or voting whether to award a grant to such business. *Id.* It also means that the board member should not participate in a decision whether to award a grant to another business or organization that is competing for a grant from the same pool of funds as the organization with which the official is associated. 1992 Wis. Eth. Bd. 22; 1992 Wis. Eth. Bd. 20; 8 Op. Eth. Bd. 33 (1985).

[5] In addition to the statutory strictures, the Ethics Board has also consistently advised that good public policy dictates that a public body should not

¹ Sections 19.45(2) and 19.46(1), *Wisconsin Statutes*, provide:

19.45 Standards of conduct; state public officials. (2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

19.46 Conflict of Interest Prohibited; Exception. (1) Except in accordance with the board’s advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official’s immediate family either separately or together, or an organization with which the official is associated.

² Section 19.42(2), *Wisconsin Statutes*, provides:

19.42 Definitions. In this subchapter:

(2) “Associated”, when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

award a grant or contract to a business or organization if any member of such public body, or the member's immediate family, will benefit *directly* from the award. 8 Op. Eth. Bd. 31 (1985); 7 Op. Eth. Bd. 5, *supra*; 1 Op. Eth. Bd. 120, 100, *supra*. Cf. §945.13, *Wisconsin Statutes*. A direct benefit would include instances in which an official has a significant ownership interest in a business applying for a grant or in which an official's income would be directly affected by the decision to award a grant or not. This contrasts with an indirect interest such as when an official is an officer, director, or agent of a business but would not be financially affected by the public body's decision. In circumstances in which an official has a direct pecuniary interest in a decision it may be difficult for colleagues to judge the merits of an application on an objective basis without consideration of the official's position on the public body. Even though an official does not in fact participate in the award decision or exert any overt influence with respect to the award, an official's financially benefiting from an award made by a board of which the official is a part is likely to undermine citizens' confidence in government and, thereby, subvert the primary goal of the Ethics Code. §19.41, *Wisconsin Statutes*.³

Advice

[6] The Ethics Board advises that a member of your board should not participate in discussing, evaluating, or voting whether to award a financial grant to a business with which the member is associated or to a grant competitor. Moreover, the Board should not award a grant to any business in which a member of the Board or the member's immediate family has a direct pecuniary interest.

³ Section 19.41, *Wisconsin Statutes*, provides:

19.41 Declaration of policy. (1) It is declared that high moral and ethical standards among state public officials and state employees are essential to the conduct of free government; that the legislature believes that a Code of Ethics for the guidance of state public officials and state employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employees.